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MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 29 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

GEORGINE G.,	)	2 CA-JV 2010-0149
	)	DEPARTMENT B
Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC	)	Appellate Procedure
SECURITY and ANGELICA R.,	)	
	)	
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JD200800149

Honorable Joseph R. Georgini, Judge

AFFIRMED

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By Richard Scherb

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Appellee Angelica R.

\_\_\_\_\_

ESPINOSA, Judge.

¶1 Georgine G. appeals from the juvenile court’s December 2010 order terminating her parental rights to her daughter Angelica, born in January 1994, on time-in-care grounds. *See* A.R.S. § 8-533(B)(8)(a), (c). On appeal, Georgine argues the court “improperly excluded” documentary evidence she had sought to admit at the termination hearing. She also maintains the court erred in finding the Arizona Department of Economic Security (ADES) had made a diligent effort to provide appropriate reunification services, as statutorily required for termination pursuant to § 8-533(B)(8)(a) or (c), and in finding termination of her parental rights was in Angelica’s best interests. Finally, she contends she was “denied an opportunity to be meaningfully heard” at the termination hearing, in violation of her right to due process.

¶2 A juvenile court “has broad discretion in admitting or excluding evidence, and we will not disturb its decision absent a clear abuse of its discretion and resulting prejudice.” *Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, ¶ 19, 107 P.3d 923, 928-29 (App. 2005). To terminate parental rights, a court must find the existence of at least one of the statutory grounds for termination enumerated in § 8-533(B) and “shall also consider the best interests of the child.” *Id.* Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that termination will serve the child’s best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we can say as a matter of law that no reasonable person could find the essential elements proven by

the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009).

### **Exhibits**

¶3 After proposed exhibits were disclosed by the parties, the juvenile court considered motions in limine filed by the state and Angelica's guardian ad litem to preclude the admission of certain documents Angelica had identified as exhibits. After reviewing each exhibit, the court ruled that twenty-five of Georgine's forty proposed exhibits would be precluded from introduction at the termination hearing, with the admissibility of other exhibits addressed as they were offered. Many of the documents pertained to custody proceedings in Illinois and Texas that predated the November 2008 dependency petition filed in Arizona, and Georgine's objections to rulings by those courts. Although her counsel had argued the exhibits evinced Georgine's continuing interest in Angelica's custody, the court ruled that Georgine would not be prohibited from testifying about such facts, but many of the documents were incomplete, irrelevant, or cumulative.

¶4 On appeal, Georgine cites counsel's objection that she would "show the relevancy of the records one by one" at the termination hearing "as she explains her life with her child and where this child sits today mentally." She argues the juvenile court "should [have] specifically inquire[d] as to each exhibit's content and relevance" and it was "insufficient for the . . . court to [have made] such determinations based on general argument categorizing all of a party's proposed exhibits." The court, however, did conduct a specific, individualized inquiry as to each of the exhibits. Moreover, although

Georgine had suggested her proposed exhibits would be offered during and in support of her direct testimony, she chose not to testify at the termination hearing. Under such circumstances, Georgine cannot show she was prejudiced by the court's ruling in limine, and we will not disturb it on appeal. *See Lashonda M.*, 210 Ariz. 77, ¶ 19, 107 P.3d at 928-29.

### **Diligent Reunification Efforts**

¶5 To prevail on a motion to terminate parental rights based on any time-in-care ground found in § 8-533(B)(8), ADES must establish that it made a diligent effort to provide the family with appropriate reunification services. *See* § 8-533(B)(8). ADES fulfills this duty by providing the parent “with the time and opportunity to participate in programs designed to help her become an effective parent.” *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). But ADES is not required to provide the parent with every conceivable service or to ensure that she participates in every service offered. *Id.*

¶6 Georgine argues the evidence was insufficient to support the court's finding that ADES had made a diligent effort to provide appropriate reunification services. She maintains the proceedings below, including the reunification services offered, were “dictated by the wishes of the child” rather than the goal of reunification. For example, she cites Angelica's unwillingness to participate in family counseling that had been proposed at a Child and Family Team meeting. She also contends ADES failed to provide appropriate services because no services had been recommended by its evaluating psychologist, who had opined that Georgine was resistant to services and

“didn’t see much point in recommending that further services be offered if she did not want to participate.”

¶7 According to Child Protective Services (CPS) case workers, Angelica was fearful of Georgine because of Georgine’s past physical and verbal abuse, and family counseling with Georgine would not have been appropriate until recommended by Angelica’s therapist. Moreover, Georgine ignores evidence that she had been offered and refused various services, including a psychological evaluation, individual counseling, parenting classes, substance-abuse assessment and recommended treatment, and random urinalysis. Based on her own testimony at a hearing in April 2010, Georgine had refused to participate in any of these services because she believed they were unnecessary. It was not until the juvenile court ordered Georgine to comply with random urinalysis, hair follicle testing, and a psychological evaluation that she completed those case plan tasks. And, although a later psychological consultation resulted in referrals for dialectical behavioral counseling and teen parenting classes, and even though Angelica had suggested she would be amenable to visitation or family therapy if Georgine first engaged in counseling, Georgine never participated in individual therapy. Ample evidence thus supported the juvenile court’s determination that ADES had made a diligent effort to provide appropriate reunification services, but Georgine had refused to utilize them.

### **Best Interests**

¶8 After the termination hearing, the juvenile court found the following with respect to Angelica’s best interests:

[Angelica] is adoptable, is currently placed in a home that is loving, stable and ready and willing to adopt her, placement is the least restrictive and most appropriate in meeting the needs of this child, [and] termination would allow this minor to be adopted and to be provided with permanency and stability.

¶9 Relying on *In re Maricopa County Juv. Action No. JS-6520*, 157 Ariz. 238, 245, 756 P.2d 335, 342 (App. 1988), Georgine maintains ADES failed to establish that her inability to parent Angelica posed “a danger to the child’s welfare.” But a finding that a child’s best interests will be served by termination may be based on either “an affirmative benefit to the child by removal or a detriment to the child by continuing in the relationship.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 14, 53 P.3d 203, 207 (App. 2002), quoting *Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553, 557, 944 P.2d 68, 72 (App. 1997). In determining a child’s best interests, a juvenile court properly may consider, as benefits resulting from termination, the availability of an adoptive home, whether an existing placement outside the parent’s home is meeting the needs of the child, and whether such placement can continue to provide a safe and stable environment. *See id.* ¶¶ 14-16. The court properly considered these factors.

¶10 Moreover, contrary to Georgine’s argument that the juvenile court “cho[ ]se to give undue weight and consideration” to Angelica’s desire to be adopted by her foster parents, CPS case workers had also opined that Angelica would benefit from the stable, permanent home that adoption would provide and that Georgine could not. Thus, the court’s finding that Angelica’s best interests would be served by termination of Georgine’s parental rights is consistent with the evidence.

## Due Process

¶11 Georgine argues she was denied due process because, during hearings on motions, Angelica’s guardian ad litem had “cut [her] off or curtly told her ‘that wasn’t my question’” and had made disparaging remarks about Georgine’s proposed exhibits. In support of her claim, she also cites the juvenile court’s admonition to her, when announcing its ruling on a motion, that “you’re not going to debate with me at this point.”

¶12 A parent’s interest in the parent-child relationship may not be changed without first affording the parent due process of law. *Maricopa County No. JS-501904*, 180 Ariz. at 355, 884 P.2d at 241 (App. 1994); *see also Mara M. v. Ariz. Dep’t of Econ. Sec.*, 201 Ariz. 503, ¶ 24, 38 P.3d 41, 45 (App. 2002) (in termination proceedings, state “must provide appropriate fair procedures”). In essence, due process requires reasonable notice and an opportunity to be heard. *J.D.S. v. Franks*, 182 Ariz. 81, 95, 893 P.2d 732, 746 (1995). Due process also includes the right to counsel and the right to cross-examine adverse witnesses. *See Ariz. State Dep’t of Pub. Welfare v. Barlow*, 80 Ariz. 249, 252-53, 296 P.2d 298, 300 (1956) (right to counsel); *In re Maricopa County Juv. Action No. JS-7499*, 163 Ariz. 153, 158, 786 P.2d 1004, 1009 (App. 1989) (right to cross-examine witnesses). In sum, due process guarantees that permissible governmental interference is fairly achieved, *see Simpson v. Owens*, 207 Ariz. 261, ¶ 17, 85 P.3d 478, 484 (App. 2004), and includes “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections,” *Maricopa County No. JS-501904*, 180 Ariz. at 355, 884 P.2d

at 241, quoting *In re Maricopa County Juv. Action No. JS-734*, 25 Ariz. App. 333, 339, 543 P.2d 454, 460 (1975).

¶13 Georgine was provided with notice of the termination proceedings and attended them, represented by counsel. She was able to cross-examine adverse witnesses. She was also given opportunities to present evidence and testify on her own behalf. We find nothing in counsel’s argument to suggest Georgine was denied a fair hearing.

**Disposition**

¶14 Georgine has presented no issue on appeal that warrants reversal of the juvenile court’s ruling. Accordingly, the court’s order terminating Georgine’s parental rights to Angelica is affirmed.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Judge